App. F. IX-4

1927-28
(Law)

File No. 15-27

Previous References
Legis Dept 114-26. ?

Serial Nos. 4-11

Later References
Law Dept 32-30.
" 38-35-1-4

General and Revenue Secretariat.

Serial Nos. 3

Part B for May 1928

SUBJECT

Amendment of Rule 41 of the Rules for the Conduct of legal matters.

Form P. 6905-228 16-5-28

11/

By express
12/2/28

GENERAL AND REVENUE SECRETARIAT

Law
27-28

NOTES. Law File No. 15

FILE HEADING.

Remuneration to P. Pr Shimoga

From District Magistrate
Kadur

No. 91·1272/27 Dated 17/11/27, Received 18/11/27.

Diary No.	Enclos.	Spare Copies.	Serial No. 9

BRIEF ABSTRACT OF LETTER.

States that P. Pr Shimoga has claimed a fee of Rs 21 for opposing a Muse appeal petition before Sessions Court Shimoga. Solicitor asks whether rule 41 applies only to appeals against convictions or also to cases of the kind above referred to. pending which bill is retained in this office.

NOTES AND ORDERS.

Sub-d under rule 41, duties of a public prosecutor are 1 to support convictions by Asst Sessions Judge & Magistrate in Sessions Court when required by D Ms 2 to act as representative of Govt in the Court of Sessions and in that capacity to receive and act upon all notices issued by such Court.

In the present case, P Pr was required by D-Dr. Kadur to oppose a Muse-appeal petition before the Court of Session Shim-ga this was against order of Special 1st class Magistrate Chickmagalur according Sanction to prosecute one Jakka Naicky under 182 I.P.C. The notice from Court of Session was received

NOTES—First Sheet.

WD 1881—GPB—30,000—1-8-21

Serial No.

ley D M. The P.Pr was at the instance of Superintendent of Police requested to despatch the order of sanction passed by the lower court. The appeal was allowed and ord of lower court revoked

2) The question is whether such a case is covered by Rule 41 so as to preclude P.Pr's from claiming separate remuneration The contention of P.Pr is that if a notice is sent to him direct from Sessions court he cannot claim separate fees since the notice in this case was sent to him by D-M, he contends that his claim sustainable He further argues that the latter part of Rule 41 does not prevent payment for cases of the kind,

The wording of rule 41 is not happy

The claim for separate remuneration, depends upon whether notice is sent to P.Pr by Sessions court or D.M if the P.P's contention is accepted. He also relies on Rule 56.

Flag H

claims for opposing bail applications in Sessions cases have been held to be inadmissible. As the rules are being redrafted, suitable provision to make the rule clear in its significance may be taken

made Whether the claim is admissible or not is not free from doubt although the contention does not appear to be of much weight. The question was raised before Mr Cole but has not been decided

Flag F

19.11.27

3) The claim of the Public prosecutor

NOTE—Contn. sheet.

WD 0324 -GPB-60,000-24-5-27

4746
1914

General and Revenue Secretariat. | File No. of 192

Serial No.

5) I have perused the old rule passed in 1904 (Hash.) I find rules 40 & 41 are badly taken from old rule 4

6) The intention of Govt in framing the new rules is not to change the ~~old~~ established practice.

7) This practice is that P. Pros are not entitled to separate fees if they appear before Sessions Courts either to conduct prosecutions or to oppose bail applications

8) & Hence it was ordered that P. Pros are not entitled to separate fees when they appear to conduct prosecutions or to oppose bail applications

9) As regards appearing in miscellaneous appeals such as the present there is no precedent

10) The reason is that such cases are very rare I cannot say with confidence that rule 41 covers the present case

11) Separate fee Rs 24 Clerks may perhaps be paid

8650 19/4

NOTE—Contn. sheet.

12) may be paid 1st class but please have 18-4 rule changed so as to make it clear that such cases are also paid for like normal on the

Law 1914 10e 19/4/20 8d 19.4

WD 0324—GPB—60,000—24-5-27

4745 5

App. F. III—2]

General and Revenue Secretariat. | File No. of 192

Serial No.

draft Subd for approval. after issue, action may be taken to amend Statutes
Mella
20/4/28

Draft as revised may be typed.
AM
26/4

Typed draft Subd for consideration
Mella
27/4/28 Secy)

AM
27/4

appd
S
28/4

ISSUE & RESUBMIT

Issue and recommend with draft amendment to Legal Affairs Rules
28/4

10 Proceedings & order no P. 6752-5/Law 15-27 dated 3-5-28. Since rule 41 as it stands is susceptible of the meaning put upon it by the P.P., his role is sanctioned as a special case.

Rule 41 may be amended by adding the words "or orders" after the word "convictions" and the words "or by the District magistrate on a requisition from such Court" may be added after the words "by such Court". The rule as amended will read as follows:-

"Where required by the District magistrate, in cases considered by him to be of special interest

NOTE—Contn. sheet.

WD 0324--GPB—60,000—24-5-27

1745

App. F. III—2]

General and Revenue Secretariat. | File No. | of 192

Serial No.

Draft Proceedings submitted

11.5.28

Draft approved

12/5

1745

Were the rules published in the Gazette? If not the present number should be published in the Gazette with a note

Yes

The rules framed in 1924 were published in the Gazette of March 29, 1924

Submitted

14.5.28

Seen 14/5

NOTE—Contn. sheet.

WD 0324—GPB—60,000—24-5-27

by the Public Prosecutor. But as I doubt the correctness of the interpretation of rule 41 advanced by him, I venture to solicit the orders of Government whether the said rule applies only to appeals against convictions by Magistrates or Assistant Sessions Judges, or it applies also to cases of the kind referred to above.

6. Copies of the Publice Prosectuor's letter dated 6-8-1927, my reply thereto, and his further communication dated the 2nd November 1927 are herein enclosed for reference.

Pending receipt of orders of Government on this reference, the bill has been retained in this office.

I have the honour to be,

Sir,

Your most obedient servant,

for District Magistrate,
Kadur District.

M.N.S.

Letter No. 34 dated 6th August 1927 from the Public Prosecutor Shimoga Division, Shimoga, to the District Magistrate, Kadur District.

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I have the honour to forward herewith a bill for Rs 21/- due to me from Government in connection with Cr.Mis.Ap. 3/26-27 (Jakku Maistry Vs. Government) on the file of the Sessions Judge, Shimoga Division. The bill has been duly certified by the Sessions Judge. I request you to kindly countersign the same and return it to me so that I may send it to the Comptroller for pre-audit.

======

Letter No. L.Dis.352 of 1927-28 dated 9th September 1927 from the District Magistrate, Kadur District, to the Public Prosecutor Shimoga Division, Shimoga.

=====

With reference to your letter No. 34 dated the 6th August 1927 forwarding for countersignature and return a bill for Rs 21/- being the fee for conducting Cr.Mis.Appeal No. 3/26-27 (Jakku Maistry Vs. Government) on the file of the Sessions Judge, Shimoga Division, I have the honour to state that since you have acted as the representative of Government in the Court of Sessions, in conducting the appeal, the claim is not, under rules 41 and 55 of the Rules for the conduct of the legal affairs of Government, admissible.

The bill is herewith returned.

=====

Letter No. 99 dated 2nd November 1927 from the Public Prosecutor Shimoga Division, Shimoga, to the District Magistrate.

With reference to your letter No. Dis.352/1927-28 dated 9-9-1927 returning my bill as inadmissible, I have the honour to state that my claim is not in respect of criminal appeal from conviction by Magistrate or Assistant Session Judge, for which alone I am not entitled to seperate fee. You are pleased to say that as I have acted as the representative of Government in the appeal under the latter part of Rule 41 and as no fee is payable in respect of duties under that Rule, I am not entitled to seperate fee. I must however bring to your kind notice that that provision is made to enable the Sessions Court to serve notices on me instead of on the District Magistrate to save time and enables me to act on it. I act for Government in every Government case and in the view taken by you, no claim is permissible even for duties under other rules. I therefore request you to kindly re-consider the question in the light of what is stated above and allow the claim.

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"COPY."

Dwarakanath

District Magistrate,
Kadur District.

M.N.S.

1927/28. 5 Cno 1105

WD 2332—GPB—450—5-8-22

D. M. 3]

No.J1-1272-27.

Office of the District Magistrate,
Kadur District.

Chikmagalur, dated...2nd March 1928.

From H. V. Ramasvami, Esq., M.A., B.L.,

DISTRICT MAGISTRATE
KADUR DISTRICT.

To B. Nagappa, Esq., Bar-at-Law.,

SECRETARY TO THE GOVERNMENT OF
HIS HIGHNESS THE MAHARAJA OF MYSORE,
Law Department,
BANGALORE.

Through The Registrar of Chief Court of Mysore, Bangalore.

SIR,

Fees to Public Prosecutors.

I have the honor to invite your kind reference to this office letter No. J1-1272-27 dated the 13th November 1927, soliciting orders of Government in respect of a bill for Rs 21/- being the remuneration claimed by the Public Prosecutor, Shimoga Division, for opposing a miscellaneous appeal petition before the Court of Sessions, Shimoga Division, and to request that you may be so good as to move Government to pass early orders in the matter as the Public Prosecutor has been reminding this office.

REGISTRAR. CHIEF COURT.
6 - MAR. 1928
OF MYSORE.

I have the honour to be,

Sir,

Your most obedient servant,

Treasury Assistant Commissioner,
For Deputy Commissioner,
Kadur District.
(Absent from Station.)

in the case, rule 41 is not applicable, and that if it were not so, he could not claim fees for duties under other rules as he act for Government in every case in which Gover ment is a party

2. The intention of Government in framing rule 41 is not to allow fees in such cases, whether the notice calling upon the Public Prosecutor to appear is issued by the Sessions Court direct or by the District Magistrate on a requisition from the Court. Since the rule as it stands, is susceptible of the interpretation put upon by the Public Prosecutor Shimoga, Government are pleased to sanction the bill in question as a special case.

3. Separate orders will be issued amending the rules so as to make the intention of Government clear.

By Order,
Secretary to Govt.
Law Department.

To

The D.M. Kadur.
The Public Prosecutor, Shimoga Divn.
The Comptroller to Govt.
The Registrar, Chief Court with a covering letter.

C.M.

PROCEEDINGS OF THE GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE.

Read:—

Order,No. P 6909-22 Law 15:27-11

Dated, Bangalore the 16 May 1928.

Rule 41 of the Rules for the conduct of legal affairs of Government prescribed in G.O.No.P.4988-5045/Cts. 76-23-1 dated 10/19th March 1924 is hereby amended as follows:—

"When required by the District Magistrates, in cases considered by him to be of special interest and importance he will support convictions by the Assistant Sessions Judges and the Magistracy, in Sessions Court. The Public Prosecutor will act as the representative of Government in the Court of Sessions and in that capacity shall receive all notices issued by that court. He will act not only upon such notices but also in all cases in which he may be required by the District Magistrate to appear on behalf of Government in that court.

By Order,

Dy. Secretary to Government.

Law Department.

To

The District Magistrates of Districts.

The Public Prosecutor, Bangalore, Shimoga, Mysore.

The Registrar, Chief Court.

The Comptroller to Government.

The Compiler, Mysore Gazette

Rd.